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CLERK U S DISTRICT COURT DISTRICT OF ARIZONA	
BY _____	DEPUTY

Jon M. Sands
Federal Public Defender
District of Arizona
Alison Y. Rose (CA Bar No. 268937)
Amanda C. Bass (AL Bar No. 1008-H16R)
Eric Zuckerman (PA Bar No. 307979)
Jennifer M. Moreno (CA Bar No. 244967)
Assistant Federal Public Defenders
850 West Adams Street, Suite 201
Phoenix, Arizona 85007
alison_rose@fd.org
amanda_bass@fd.org
eric_zuckerman@fd.org
jennifer_moreno@fd.org
602.382.2734 Telephone
602.382.2800 Facsimile

Counsel for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Clarence Wayne Dixon,
Plaintiff,

vs.

The Arizona Department of Corrections,
Rehabilitation & Reentry (ADCRR); David
Shinn, Director of the Arizona Department
of Corrections, Rehabilitation & Reentry;
James Kimble, Warden, ASPC – Eyman;
Travis Scott, Deputy Warden, ASPC –
Browning Unit; and John Does, Unknown
ADCRR Personnel, in their official
capacities as Employees, Contractors,
and/or Agents of the Arizona Department of
Corrections, Rehabilitation & Reentry,
Defendants.

CV-22-604-PHX-MTL (JFM)

COMPLAINT FOR EQUITABLE,
INJUNCTIVE, AND DECLARATORY
RELIEF [42 U.S.C. § 1983]

Introduction

1. Plaintiff Clarence Wayne Dixon is a 66-year-old visually disabled, physically frail, and severely mentally ill prisoner subject to a sentence of death imposed by the Maricopa County Superior Court. Plaintiff is a United States and Arizona citizen, resident of the State of Arizona, and member of the sovereign Navajo Nation. He is scheduled to be executed by the State of Arizona on May 11, 2022.

2. Upon issuance of the warrant for Plaintiff's execution on April 5, 2022, he was transported from his close custody cell at Central Unit to a Death Watch cell at Browning Unit. Plaintiff has been housed on Death Watch for the last seven days and, pursuant to the Arizona Department of Corrections, Rehabilitation & Reentry's ("ADCRR") execution protocol, will remain there for the next twenty-nine days until he is executed. *See* Ariz. Dep't of Corr., Rehab. & Reentry, *Dep't Order 710—Execution Procedures* at 11–18 (Mar. 10, 2021), https://corrections.az.gov/sites/default/files/policies/700/0710_031021.pdf ("DO 710").

3. Upon information and belief, Plaintiff's Death Watch cell consists of three concrete walls and a fourth wall consisting of plexiglass. A corrections officer is stationed directly outside of his cell and, upon information and belief, writes down Plaintiff's movement in a log every fifteen minutes. A camera is located in Plaintiff's cell that records all of his movements. Plaintiff has the following items with him in his solitary cell: personal and legal paperwork; a digital talking book; audio books; a tape recorder; a talking clock; an ocular eye piece; a folding cane; UV sunglasses; a digital wristwatch; a tablet; Sony tape player; used cassette tapes; clothing items; shower shoes; 2 sheets; 2 blankets; 1 pillow case; 1 towel; 1 washcloth; 1 writing board; and a baggie containing a plastic spoon, instant drink mixes, and salt and pepper. Plaintiff must ask the corrections officer seated outside of his cell for toilet paper each time he needs to use the toilet. Upon information and belief, Plaintiff is the only prisoner housed on Death Watch and, apart from limited contacts with ADCRR staff and daily legal visits, he has spent the last eight days in near total isolation.

Nature of Action

4. This action is brought pursuant to 42 U.S.C. § 1983 for violations by the Arizona Department of Corrections, Rehabilitation and Reentry (“ADCRR”) and its personnel of Plaintiff’s Eighth Amendment right to be free from cruel and unusual punishment, his Fourteenth Amendment right to due process, and his rights under Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131, et seq. (“the ADA”) and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794(a) (“Section 504”), and their respective implementing regulations.

5. Plaintiff seeks equitable, injunctive, and declaratory relief to prevent Defendants from continuing to subject him to conditions of confinement prior to his execution that violate the Constitution, the ADA, and Section 504.

6. This Complaint does not challenge Plaintiff’s underlying capital conviction or sentence of death, nor does it allege that his execution is per se unconstitutional.

Jurisdiction and Venue

7. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1343 (civil rights violations), 28 U.S.C. § 2201 (declaratory relief), and 28 U.S.C. § 2202 (injunctive relief). Plaintiff invokes this Court’s jurisdiction pursuant to Article III of the United States Constitution, the Eighth and Fourteenth Amendments to the United States Constitution, 42 U.S.C. § 1983, the ADA, and Section 504.

8. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b). Plaintiff is currently incarcerated at the Arizona State Prison Complex (“ASPC”)—Browning Unit, 1305 E. Butte Avenue, Florence, Arizona, 85132, located in this District. Each Defendant resides in this District and all of the events giving rise to Plaintiff’s claims have occurred and/or will occur in this District.

The Parties

9. Plaintiff Clarence Wayne Dixon is a United States and Arizona citizen, and member of the sovereign Navajo Nation. Plaintiff is incarcerated at ASPC—Browning Unit in Florence, Arizona.

1 10. Plaintiff is under a warrant of execution and is scheduled to be executed on May
2 11, 2022. On January 5, 2022, the State of Arizona moved the Arizona Supreme Court to
3 set a briefing schedule on its anticipated motion for a warrant of execution for Plaintiff.
4 See Motion to Set Briefing Schedule for Motion for Warrant of Execution, *State of*
5 *Arizona v. Clarence Wayne Dixon*, No. CR-08-0025-AP (Ariz. Jan. 5, 2022). On
6 February 9, 2022, the Arizona Supreme Court granted the State's motion and set a briefing
7 schedule on the warrant for Plaintiff's execution that concluded on March 31, 2022. Order,
8 *State of Arizona v. Clarence Wayne Dixon*, No. CR-08-0025-AP (Ariz. Feb. 9, 2022).
9 The Arizona Supreme Court conferenced the State's motion on April 5, 2022. *Id.* A
10 warrant of execution issued that same day, and Plaintiff's execution will occur on May
11 11, 2022. See Ariz. R. Crim. P. 31.23(c) (requiring a warrant of execution to "specify an
12 execution date that is 35 days after the warrant's issuance").

13 11. Defendant David Shinn is the Director of ADCRR and is being sued in his official
14 capacity for equitable, injunctive, and declaratory relief.

15 12. Defendant Travis Scott is the Warden of ASPC—Browning Unit where Plaintiff is
16 being subjected to Department Order 710's Death Watch protocol and is being sued in
17 his official capacity for equitable, injunctive, and declaratory relief.

18 13. Defendant James Kimble is the Warden of ASPC—Florence where Plaintiff was
19 subjected to Department Order 710's Death Watch Protocol between April 5, 2022 and
20 April 6, 2022, and is being sued in his official capacity for equitable, injunctive, and
21 declaratory relief.

22 14. Defendants John Does, Unknown ADCRR Personnel, are staff or agents of
23 ADCRR or the State of Arizona who are ADCRR's officers, successors in office, agents,
24 contractors, and employees, along with those acting in concert with them, who have
25 participated or will participate in Plaintiff's incarceration on Death Watch for thirty-five
26 days prior to his execution involving, *inter alia*, transferring Plaintiff to the Death Watch
27 cell, placing him under 24-hour continuous observation, and depriving him of a blind aide
28 which he requires to carry out the basic activities of daily living due to his visual disability.

1 Plaintiff is not aware of the true identities of John Does, but alleges that when Plaintiff
2 discovers their identities, Plaintiff will amend this Complaint accordingly.

3 15. Defendant ADCRR is a public entity within the meaning of and subject to Title II
4 of the ADA. *See* 42 U.S.C. § 12131(1). ADCRR is duly organized and exists under the
5 laws of the State of Arizona, and a government entity. ADCRR is responsible for, and
6 retains authority over, the operation and management of Arizona's correctional facilities,
7 including ASPC – Browning Unit, and is subject to the ADA Regulations at 28 C.F.R. §
8 35.152, *et seq.*

9 16. ADCRR receives state and federal funds for the operation of its prisons and has
10 received such funds throughout the time period during which the acts described herein
11 have continued. ADCRR is legally responsible for ADA violations committed by ADCRR
12 staff and contractors who provide programs, services, or activities, including, but not
13 limited to, transferring prisoners to Death Watch and overseeing and operating Death
14 Watch. *See* 28 C.F.R. § 35.130(b)(1).

15 17. Defendants are also departments, agencies, or instrumentalities of the State of
16 Arizona or representatives of the same and are “public entit[ies]” within the meaning of
17 42 U.S.C. § 12131(1)(B).

18 Relevant Facts

19 A. Plaintiff is Legally Blind

20 18. In 2000, Plaintiff was diagnosed with Glaucoma. (Ex. 1.) His vision has steadily
21 deteriorated since his diagnosis, and he was declared legally blind in 2015. (Ex. 2.)
22 Plaintiff is legally blind in both eyes and substantially limited in major life activities such
23 as reading and writing.

24 19. Plaintiff is a qualified individual with disabilities within the meaning of the ADA,
25 42 U.S.C. §§ 12102, 12131, 28 C.F.R. § 35.104. Plaintiff has physical impairments in that
26 he is legally blind. Plaintiff also suffers from brain abnormalities and a serious mental
27 illness, including paranoid schizophrenia, a psychotic disorder, and prior findings of legal
28 insanity.

20. As a result of Plaintiff's blindness, ADCRR has designated him as having "Medical ADA Restrictions/Special Needs." (Ex. 3.) Plaintiff has been able to engage in certain activities of daily living despite his visual disability only as the result of accommodations provided to him by ADCRR.

21. Those accommodations include the assistance of a blind attendant and use of several physical auxiliary aids. Plaintiff's blind aide¹ has historically helped him to navigate his surroundings by escorting him to and from medical appointments and visitation; complete prison-related forms and other paperwork, including health needs requests; locate items in his cell; identify what and who are in his immediate surroundings; and read and transcribe correspondence, including letters, emails, and legal mail. (*See, e.g.,* Ex. 4 (noting the form was "written out by blind aid Nelson, B.")) ADCRR has also provided Plaintiff with: a folding cane (for navigation, orientation, and mobility); a cassette tape recorder (to record legal correspondence to his team); a Sony tape player (to listen to legal correspondence recorded by his team); a 50x magnifying ocular eye piece; a digital talking book, through the Arizona Talking Book Library (to listen to audiobooks and news); a talking clock and digital wristwatch (with alarm settings to help Plaintiff keep track of time); a tablet (which includes a feature that tells Plaintiff the time); and UV sunglasses.

22. Plaintiff's legal blindness qualifies him as a disabled person under the ADA and Section 504. (*See* Ex. 2.)

B. Plaintiff Has an Extensive History of Severe Mental Illness, Incompetency, and Legal Insanity

23. In addition to being visually disabled, Plaintiff is seriously mentally ill ("SMI") and is diagnosed with paranoid schizophrenia. (Ex. 5 at 3 (stating Plaintiff "present[ed] symptoms of undifferentiated schizophrenia").)

¹ Death row prisoner Scott Lehr was Plaintiff's blind aide from August 2, 2017 until February 16, 2021. Between February 16, 2021 and April 21, 2021, death row prisoner Robert Walden served as Plaintiff's blind aide. On information and belief, Mr. Walden was removed as Plaintiff's aide in April 2021 and put on report in retaliation for informing Plaintiff's counsel that Plaintiff was being denied access to legal cassette correspondence which Plaintiff uses to communicate with counsel due to his visual disability.

1 24. Plaintiff has a long and well-documented history of SMI, including prior findings
2 of incompetency, a legal finding of not guilty by reason of insanity (“NGRI”), and
3 multiple diagnoses of paranoid schizophrenia. (Ex. 5; Ex. 6; Ex. 7; Ex. 8; Ex. 9.)

4 25. In 1977, Plaintiff was arrested for an assault that involved bizarre behavior both
5 during and after the offense. Former U.S. Supreme Court Justice Sandra Day O’Connor—
6 then sitting as an Arizona trial judge—referred him for Rule 11 competency proceedings.
7 As a result, Plaintiff was found incompetent by two separate evaluators. In September
8 1977, a court-appointed psychiatrist determined that “he cannot make competent decisions
9 regarding the waiver of [his legal] rights” and that his understanding of the consequences
10 of entering a plea of guilty “is not rational.” (Ex. 6 at 1 ¶ 2.) That same month, another
11 court-appointed psychiatrist found that Plaintiff “cannot assist counsel in the preparation
12 of his defense. At this time he presents symptoms of undifferentiated schizophrenia, in
13 partial remission.” (Ex. 5 at 3.)

14 26. In the aftermath of these incompetency findings, Plaintiff was committed to the
15 Arizona State Hospital (“ASH”). He was released from ASH approximately two months
16 later, after a third psychiatrist found he had regained competency to stand trial. (Ex. 10.)

17 27. On January 5, 1978, Plaintiff was found Not Guilty By Reason of Insanity
18 (“NGRI”) and released, pending civil commitment proceedings, which Judge O’Connor
19 ordered the State to commence within 10 days. (Ex. 7.) The murder for which Plaintiff is
20 scheduled to be executed occurred less than two days after the NGRI finding and civil
21 commitment proceedings were ordered. At the time of the murder, Plaintiff was a student
22 at Arizona State University who, on January 12, 1978, withdrew from classes due to his
23 declining mental health (Ex. 11.)

24 28. More than two decades later, in November 2002, Plaintiff was indicted for the
25 January 7, 1978 murder and sexual assault of Deana Bowdoin based on the discovery of
26 inculpatory DNA evidence. (Ex. 12.) At the time of his indictment, Plaintiff was serving
27 seven life sentences for his 1985 convictions arising out of another sexual assault. In 1995,
28 during Plaintiff’s incarceration for the 1985 convictions, Department of Corrections staff

1 collected the DNA sample from Plaintiff that ultimately linked him to Bowdoin's murder.

2 29. During his capital trial, Plaintiff fired his attorneys due to their refusal to raise an
3 issue over which he perseverated that had no basis in fact or law. He was allowed to
4 represent himself despite evidence of ongoing incompetency known to his attorneys, and
5 despite the prior findings of incompetency and legal insanity. Plaintiff's delusional
6 rationale for firing his counsel was based on his irrational belief that the DNA sample
7 taken from him in 1995, while he was incarcerated for sexually assaulting a Northern
8 Arizona University ("NAU") student ten years earlier, was inadmissible in his capital case
9 because the NAU police were not a legal entity when they arrested him in 1985. (Ex. 13.)
10 This claim ("the NAU issue"), however, lacked *any* basis in fact, principally because the
11 collection of the DNA sample by Department of Corrections staff in 1995 had no
12 connection to Plaintiff's arrest for the 1985 offenses, and because it was the Flagstaff City
13 Police, not the NAU police, that arrested Plaintiff in 1985.

14 30. After firing capital trial counsel so that he could raise the meritless NAU issue,
15 Plaintiff immediately filed a Motion to Suppress the DNA Evidence based on the NAU
16 issue and, when the trial court denied his motion, he filed a special action in the Arizona
17 Supreme Court, which was also denied. While ineffectively representing himself, Plaintiff
18 was convicted and sentenced to death.

19 31. For almost 30 years, Plaintiff has prepared and submitted numerous pro se filings
20 in state and federal courts arguing the NAU police lacked authority to investigate and
21 arrest him in 1985. In February 1993, he filed his first pro se filing, a petition for writ of
22 habeas corpus, in the Arizona Supreme Court alleging the NAU police had no authority
23 to gather evidence. The court denied his petition and subsequent petition for review. Five
24 months later, in February 1994, he filed a petition for writ of habeas corpus in Pinal
25 County Superior Court claiming he was illegally confined because the NAU officers
26 lacked authority to enforce Arizona laws. The court transferred his case to Coconino
27 County. He then filed a petition for special action in Pinal County, which was dismissed
28 in July 1994. Six weeks later, in August 1994, he filed a notice of postconviction relief in

1 Coconino County and then filed his petition about two months later. On April 14, 1995,
2 his petition was denied. His subsequent petitions for review were denied. In October 2001,
3 he filed a petition for postconviction relief in Coconino County, which was denied four
4 months later in February 2002. He filed two petitions for review in 2002 and 2003 that
5 were denied. During the pendency of his capital trial and appeals, he continued to raise
6 this issue with counsel and continues to raise this issue. In 2021, he filed pro se petitions
7 for habeas corpus in the Arizona Supreme Court and a petition for a writ of certiorari in
8 the United States Supreme Court. His certiorari petition was denied.

9 32. During state postconviction proceedings, Plaintiff was evaluated by John Toma,
10 Ph.D., and Lauro Amezcua-Patino, M.D. Dr. Toma found that he suffered from “mood,
11 thought and perceptual disturbances” and that there were “significant cognitive [brain]
12 impairments noted from his neuropsychological test scores.” (Ex. 8 at 21, 22.) Further, the
13 neuropsychological tests indicated possible brain damage meeting the diagnostic criteria
14 for Cognitive Disorder, Not Otherwise Specified (“NOS”). (Ex. 8 at 18, 22–23, 24.)
15 Plaintiff also underwent neuroimaging that evidenced brain abnormalities. (Ex. 14 at 4.)

16 33. In addition to the findings of brain impairment, Dr. Toma found evidence of
17 Plaintiff’s mental illness, including severe depression, paranoia, and perceptual
18 disturbances, and diagnosed him with a psychotic disorder, schizophrenia. (Ex. 8 at 21-
19 22, 24.) Dr. Toma also administered the Minnesota Multiphasic Personality Inventory-2
20 (“MMPI-2”), which corroborated a finding that Plaintiff suffers from “[a] psychotic
21 disorder (such as Schizophrenia)[.]” (Ex. 8 at 20.) Dr. Toma found that Plaintiff met the
22 DSM-IV-TR diagnostic criteria for Paranoid Schizophrenia. (Ex. 8 at 24.)

23 34. Dr. Amezcua-Patino concluded that Plaintiff “suffers from chronic and severe
24 psychiatrically determinable thought, cognition and mood impairments that are expected
25 to continue for an indefinite period of time of a Schizophrenic nature[.]” (Ex. 9 at 4.)

26 35. Plaintiff’s current mental state is consistent with his history of psychotic delusions,
27 schizophrenia, legal insanity, and incompetency. He was recently reevaluated by Dr.
28 Amezcua-Patino, who concluded that Plaintiff is incompetent to be executed because his

1 “capacity to understand the rationality of his execution is contaminated by the
2 schizophrenic process which results in his deluded thinking about the law, the judicial
3 system, his own lawyers, and his ultimate execution[.]” (Ex. 15 at 13.)

4 36. Dr. Amezcua-Patino also concluded that Plaintiff’s mental illness puts him at
5 heightened risk of suffering physical and psychiatric harm on Death Watch:

6 It is a well-known fact that extreme isolation of any individual leads to severe
7 psychological and psychiatric distress; vulnerable individuals such as those
8 with mental disorders are particularly more susceptible to decompensations.

9 In Clarence’s case, the psychosocial and physical stress related to increased
10 isolation, lack of any privacy, and 24-hour supervision is likely to worsen his
11 delusional and paranoid thinking, initiate a new depressive episode, and
12 worsen his anxiety. In the context of his blindness, deathwatch becomes a
13 new challenge with new uncertainties that will challenge all of his acquired
14 abilities to manage his blindness.

15 Under his circumstances, deathwatch isolation is analogous to psychological
16 torture that is highly likely to lead to psychiatric decompensation.

17 (Ex. 15 at 13.)

18 **Exhaustion of Administrative Remedies**

19 37. Plaintiff has exhausted all the remedies available to him in an effort to resolve these
20 issues. Disability accommodations are not contemplated by or provided for in ADCRR’s
21 Department Order 710. Plaintiff has grieved the unlawfulness of Death Watch generally
22 and as applied to him as a disabled prisoner in accordance with ADCRR’s grievance
23 procedures.

24 38. On February 10, 2022, Plaintiff filed an Inmate Informal Complaint wherein he
25 challenged Department Order 710—and Death Watch specifically—as a violation of his
26 federal rights. (Ex. 16.)

27 39. On February 14, 2022, Plaintiff filed an Inmate Grievance wherein he again
28 challenged Department Order 710 and Death Watch as a violation of his federal rights “as
a visually disabled prisoner.” (Ex. 17.)

40. On February 23, 2022, following ADCRR’s denial of his Inmate Grievance,

1 Plaintiff filed an Inmate Grievance Appeal wherein he “appeal[ed] the February 17th
 2 deci[s]ion denying my grievance by ADW Jensen. 35 days and nights of contemplation
 3 of my execution completely heightened by deliberate isolation, punitive removal and
 4 confiscation of my personal property including a digit[al] talking book, and radio, and
 5 complete removal of any kind of privacy by C.O.s observing 24/7 is a deliberate and
 6 focused protocol of mental pain and emotional torture.” (Ex. 18.) Plaintiff’s grievance
 7 appeal stated further that:

8 Complete isolation, lose [sic] of property, lose [sic] of any semblance of
 9 privacy and 35 days and nights contemplating death’s arrival as an unnatural
 10 homicide is a violation of the 4th, 6th, 8th, and 14th Amendments of the U.S.
 11 Constitution and Arizona’s counterpart. For these many important reasons I
 12 request the 35 day death watch protocol found in D.O. 710 be eliminated as
 13 unconstitutional. I am totally blind and D.O. 710 violate[s] the Americans
 14 with [D]isabilities Act and international human rights laws.

15 (Ex. 18)²

16 41. In addition to exhausting ADCRR’s internal grievance procedures, on February 17,
 17 2022, counsel for Plaintiff put ADCRR on notice that:

18 Mr. Dixon has a disability as defined by Title II of the ADA and Section 504
 19 of the Rehabilitation Act, and is seriously mentally ill. Mr. Dixon’s
 20 conditions mean that the Arizona Department of Corrections, Rehabilitation
 21 and Reentry’s (ADCRR’s) execution protocol, which requires Mr. Dixon to
 22 be isolated and continuously watched for the thirty-five-day period before
 23 his execution, will seriously affect his ability to navigate his environment and
 24 maintain mental health.

25 (Ex. 20 at 1.) Plaintiff’s counsel specifically asked what, if any, accommodations would
 26 be provided to account for Plaintiff’s visual disability during Death Watch and requested
 27 that ADCRR “[m]aintain [his] current conditions of confinement until any execution
 28 (again, with full support of his personal and physical aids), rather than subjecting him to
 the harm caused by the facially torturous conditions imposed by the Execution Protocol’s
 isolation requirement. (Ex. 20 at 3–4.)

42. On February 25, 2022, ADCRR informed Plaintiff’s counsel that it would allow

² Plaintiff’s grievance appeal was denied on April 6, 2022. (Ex. 19.)

1 Plaintiff to have “continued access to and use of the nine physical and auxiliary aids
2 delineated in your letter, . . . (1) folding cane, (2) cassette tape recorder, (3) Sony tape
3 player, (4) 50x magnifying ocular eye piece, (5) talking book, (6) talking clock, (7) digital
4 wristwatch with alarm settings, (8) tablet with dime feature, (9) UV sunglasses.” (Ex. 21
5 at 1.) ADCRR also advised Plaintiff’s counsel that he would have “continued access to
6 and use of his current blind aide, fellow Death Row Inmate Brad Nelson (ADCRR
7 #249535). When Inmate Dixon is transferred to the single-person cell on the Browning
8 Unit, Inmate Nelson will be transferred with him and housed in the adjoining cell.” (Ex.
9 21 at 1.)

10 43. ADCRR informed Plaintiff’s counsel that ADCRR will not accommodate your
11 request that Inmate Dixon be permitted to ‘privately use his audio aids to communicate
12 with his legal team without guards observing orally or visually his creation or receipt of
13 legal materials because the safe, secure, and orderly operation of the prison requires
14 continuous visual contact during the 35-day period.” (Ex. 21 at 1.) It provided that “in
15 order to preserve the confidentiality of the attorney-client relationship and attorney-client
16 communications, security staff will not be posted so as to enable them to hear what Inmate
17 Dixon and/or Inmate Nelson are saying when they are discussing confidential legal
18 communications with Inmate Dixon’s attorneys, but they will remain posted so as to
19 enable them to maintain visual contact with Inmate Dixon at all times, as required by DO
20 710, § 7.1.6.” (Ex. 21 at 2.)

21 44. ADCRR stated that it “will not accommodate your final request to depart from the
22 longstanding provisions of DO 710, § 7.1 and § 7.2 and maintain Inmate Dixon’s current
23 housing and conditions of confinement[.]” (Ex. 21 at 2.) It represented that while on Death
24 Watch:

25 First, Inmate Dixon will be housed next to his blind aide, Inmate Nelson, and
26 may communicate with him at will. Second, Inmate Dixon may communicate
27 with security staff at will. Third, Inmate Dixon may watch TV, as expressly
28 permitted in DO 710, § 7.2.9. Fourth, Inmate Dixon may participate in
outdoor exercise and take showers per the current schedule for all other Death

Row inmates in the Browning Unit, as expressly permitted in DO 710, § 7.2.10. Fifth, Inmate Dixon may communicate with his family, friends, clergy, and attorneys, via phone calls and non-contact visits, per the current schedule for all other Death Row inmates in the Browning Unit, as expressly permitted in DO 710, § 7.2.10.

(Ex. 21 at 2.)

45. ADCRR did not address—nor has it accommodated—Plaintiff’s concern that being housed on Death Watch where he will be under constant surveillance for thirty-five days prior to his execution puts him “at a higher risk of suffering as a result of his mental illness, combined with his visual disability. . . . because he is aware that he will be under constant surveillance while in isolation, he will suffer from being unable to know who is watching him, and what type of surveillance the watchers are engaging in.” (Ex. 20 at 4.)

46. Prior to the warrant of execution issuing for Mr. Dixon, Mr. Nelson found that his own placement in a Death Watch setting would be too traumatic and he reported that he would not be able join Mr. Dixon on Death Watch or serve as his blind aide. While ADCRR initially found a replacement blind aide, a prisoner housed on Browning Unit where Death Watch is located, that prisoner too declined to serve as Mr. Dixon’s aide. Despite having a significant amount of time to plan for Mr. Dixon to have access to a blind aide on Death Watch,³ ADCRR moved Mr. Dixon to Death Watch on April 6, 2022.

47. The day Plaintiff was moved to Death Watch, counsel for Plaintiff contacted ADCRR General Counsel Brad Keogh by phone, and then followed up with written correspondence, in order to attempt to resolve the issue. While ADCRR provided Plaintiff with nine of the auxiliary aids listed in its February 25, 2022 letter to counsel, (*see* Ex. 21), it did not provide Plaintiff with access to a blind aide. Counsel asked that ADCRR fulfill its written agreement (and its ADA obligation) to provide Plaintiff with a blind aide

³ ADCRR has been seeking an execution date for Mr. Dixon since April 6, 2021 when the State filed a Motion to Set Briefing Schedule for Motion for Warrant of Execution with the Arizona Supreme Court, *State of Arizona v. Clarence Wayne Dixon*, No. CR-08-0025-AP (Ariz. Apr. 6, 2021). Given that Mr. Dixon has been legally entitled to a blind aide since 2017, ADCRR has had at least a full year to arrange for Mr. Dixon to have access to a blind aide on Death Watch, consistent with the Department’s legal obligations under the ADA and Section 504.

1 on Death Watch. (Ex. 22 at 9.)

2 48. Counsel also asked that ADCRR provide Plaintiff with several additional items and
3 accommodations, including: (1) daily contact visits with his legal team; (2) medicated eye
4 drops that he requires for glaucoma; (3) COVID-testing; (4) his sweatshirt; (5) his writing
5 board; and (6) blank cassette tapes. (Ex. 22 at 9–10.) Mr. Keogh responded that, in
6 addition to providing Plaintiff with these items, “[a]ccommodations will be made to
7 facilitate a blind aide for eight hours every day, from 8:00 a.m. to 4:00 p.m. However,
8 since [two prisoners] both have now refused to serve as Inmate Dixon’s blind aide, as we
9 discussed yesterday evening, this responsibility now falls to your office to designate
10 personnel to perform this task.” (Ex. 22 at 7.)

11 49. Counsel informed Mr. Keogh that not only was it “not feasible for someone in my
12 office to serve as Mr. Dixon’s blind aide for 8 hours each day for the next 34 days[,]” but
13 that “as a public entity subject to the ADA and Section 504, the responsibility for
14 providing Mr. Dixon with a blind aide—as it did for several years while Mr. Dixon was
15 housed on Central Unit—lies with ADCRR.” (Ex. 22.) Mr. Keogh subsequently offered
16 “Inmate Dixon’s assigned COIII to provide reading assistance on as as-needed basis when
17 requested by Inmate Dixon” and inquired about whether, in light of this, “you are waiving
18 the attorney-client privilege and attorney work product privilege on behalf of Inmate
19 Dixon, or whether you are proposing some other mechanism by which ADCRR personnel
20 may provide this assistance given your office’s refusal to provide it to your own client.”
21 (Ex. 22.)

22 50. Counsel proposed that, if ADCRR were to designate Plaintiff’s assigned COIII to
23 assist Plaintiff as a blind aide, “we would ask that ADCRR enter into a written agreement
24 with my office that the COIII’s work with Mr. Dixon in this capacity will remain
25 privileged, confidential, not subject to disclosure, and that Mr. Dixon is not waiving either
26 work-product or attorney-client privileges by receiving blind aide assistance from his
27 COIII.” (Ex. 22.) Counsel asked Mr. Keogh to “please send us a draft agreement for our
28 review.” (Ex. 22.)

1 51. Instead, Mr. Keogh advised counsel that “[i]t is neither legally nor factually tenable
 2 for an ADCRR employee to be the legal and factual agent of the Federal Public Defender’s
 3 Office in order to preserve the attorney-client privilege and attorney work product
 4 privilege. It is for that reason that I inquired whether you were waiving those privileges
 5 given your office’s refusal to provide this assistance to your own client.” (Ex. 22.)

6 52. In other words, while ADCRR again has repeatedly acknowledged that Plaintiff is
 7 entitled to a blind aide accommodation as a visually disabled person, and although it
 8 previously assured Plaintiff that a blind aide would in fact be provided once moved to
 9 Death Watch, ADCRR has shifted its own legal responsibility for providing this
 10 accommodation onto Plaintiff and his counsel.

11 **General Allegations**

12 **A. Plaintiff Is Being Subjected to Death Watch Conditions**

13 53. “Death Watch” refers to changes in Plaintiff’s conditions of confinement
 14 implemented by Defendants pursuant to Department Order 710 after a death warrant
 15 issues. DO 710 (7.0 et seq.). These changes include relocation to a new cell, increased or
 16 around-the-clock observation, and limited access to personal property. (*Id.*)

17 54. Death Watch is commenced by the warden reading to the condemned prisoner his
 18 execution warrant. DO 710.07(1.1). It begins thirty-five days before the scheduled
 19 execution. DO 710 § 7.1.2.

20 55. After the Arizona Supreme Court granted the State’s motion for warrant of
 21 execution on April 5, 2022, Plaintiff’s Central Unit cell was emptied and he remained
 22 there overnight with a guard stationed outside until he was transported to the Death Watch
 23 Cell at Browning Unit at approximately 7:30 a.m. on April 6, 2022. During this time,
 24 Plaintiff did not have access to the medicated eyedrops or the oral medication prescribed
 25 for his glaucoma. At approximately 7:30 a.m. on April 6, 2022, Plaintiff was taken from
 26 his Central Unit Cell, strip searched, taken to a receiving area, and put in a van that
 27 transported him to Browning Unit. Defendant Scott read the execution warrant to Plaintiff.
 28 Plaintiff was then strip searched, x-rayed, “screened on the [Body Orifice Security

Scanner] chair,” issued new clothes and shoes, and then put in a small room by himself with his property and legal boxes where he felt through the materials he wished to take with him to an entirely new single-person Death Watch cell. DO 710 §§ 7.1.5.1–7.1.5.2.

56. For thirty-five days from April 5, 2022, Plaintiff will be under 24-hour continuous observation by corrections officers and cameras. DO 710 § 7.1.6. Correctional staff write down Plaintiff’s “activities and behavior until the sentence of death is imposed” in an observation record. DO 710 § 7.1.7.

57. Plaintiff is not allowed to possess personal property other than select clothing items, several approved auxiliary aids permitted due to his visual disability, and “one box each of legal and religious materials, a pencil and paper, and a book or periodical” without approval from prison administrators. DO 710 §§ 7.2.1, 7.2.4.

58. On information and belief, Plaintiff will be allowed to maintain the same shower, outdoor exercise, and phone schedule as other Death Row inmates in Browning Unit. DO 710 § 7.2.10.

B. A Former Prisoner’s Account Details the Harsh, Dehumanizing Conditions on Death Watch

59. In his Death Watch Diary, Arizona prisoner Robert Towery described the experience of being on Death Watch pursuant to ADCRR’s protocol before his execution in 2012. *See generally* Robert Charles Towery, *Death Watch Diary: The Last Days of a Death Row Prisoner* (2012). Mr. Towery describes the feeling of being on Death Watch as “complete helplessness and hopelessness . . . every time you want to blow your nose, or go to the bathroom you have to ask for toilet paper. Everything is like that, so you have to ask for everything, when these things are basic needs and functions. *Id.* at 8.

60. Death Watch is characterized by: 1) significant noise in the area around a condemned prisoner’s cell; 2) the constant influx of prison employees in and out of the area near the Death Watch cell; 3) the persistence required for the condemned prisoner to receive requested personal items; 4) the discomfort of continuous observation; and 5) constant reminders of the condemned prisoner’s impending execution.

i. Death Watch is Marked by Significant Noise at All Hours

61. According to Mr. Towery, the Death Watch cell and surrounding area was loud for the duration of the thirty-five days he was on Death Watch, resulting in impaired sleep. *Id.* at 5, 8, 11–12, 16–18, 21–22, 24, 31, 34, 37. He described the talking between corrections officers, radio transmissions, and other sounds as “a never-ending noise that can’t be escaped.” *Id.* at 9. He recounted that at times, there were nine guards sitting at the folding table outside of his cell. *Id.* at 12. His sleep was interrupted by medical checks from nurses or mental health professionals. *Id.* at 26.

ii. Unfamiliar Personnel Continuously Come and Go Immediately Outside the Death Watch Cell

62. Mr. Towery recounted a high number of prison personnel in the area. *Id.* at 5, 7, 8–9, 20, 22. Those individuals included the prison warden, deputy warden, assistant deputy warden, tower officers, floor officers, lieutenants, sergeants, nurses, and psychiatrists. *Id.*

iii. Requesting Personal Items Requires Persistence

63. Personal items are not permitted in the Death Watch cell without permission from the Assistant Director for Prison Operations. (Dep’t Order 710 § 7.2.3) For Mr. Towery, this resulted in delays receiving those items. *Id.* at 4–6. Upon arrival to Death Watch, the condemned prisoner is given “a pencil . . . one book, TV guide, Bible, legal materials, writing materials and new clothing and bedding (two towels, one washcloth, two sheets, pillow case, two blankets, pillow, mattress, boxers, t-shirt, socks and a jump suit. [sic] [. . .] and a new pair of flip flops and orange deck shoes.” *Id.* at 5. He was initially not permitted to keep his wristwatch. *Id.* at 4.

64. Mr. Towery requested his personal headphones, photos, a radio, a heating pad, glasses, hygiene items, and his personal food items. *Id.* at 4–5. He received his heating pad, watch, a back wedge, photo album, a second Bible, and a pair of prescription glasses three days after being brought to Death Watch. *Id.* at 9. He received his personal food items ten days after being brought to Death Watch. *Id.* at 18. Other personal hygiene items, like Mr. Towery’s brush and conditioner, took nearly the entirety of his time on Death

1 Watch to be approved. *Id.* at 32.

2 **iv. The Discomfort of Continuous Observation**

3 65. In addition to the officers and cameras continuously observing Mr. Towery, he
4 noted that every piece of mail is logged, and officers documented all of his movements,
5 including going to the bathroom. *Id.* at 13. The camera facing the Death Watch cell
6 captured the toilet, both on a live feed and recording. *Id.* at 32.

7 66. The discomfort of being observed while going to the bathroom resulted in Mr.
8 Towery having to ask the medical staff for laxatives due to constipation. *Id.* at 32. He
9 stated, “[w]hen [continuous observation] causes physiological changes and physical
10 discomfort to the point of requesting medication, I think it crosses over to being abusive
11 or torturous” *Id.* at 32.

12 67. Even legal calls were sometimes conducted without privacy. *Id.* at 8. Although
13 officers allowed Mr. Towery to choose whether to have his legal calls in his cell or in the
14 “dry”⁴ cell, he said that “either way there is a correctional officer within ten feet.” *Id.* at
15 12. Going to the dry cell, taking calls, showering, and receiving non-contact visits all
16 required that Mr. Towery be shackled and strip-searched, disincentivizing him from
17 choosing to partake in those activities. *Id.* at 12–13. Additionally, Mr. Towery described
18 having female corrections officers present while he was strip searched or went to the
19 restroom as “just one more humiliation.” *Id.* at 6.

20 68. Being continuously watched for thirty-five days is psychologically torturous.

21 **v. Death Watch Institutionalizes Persistent Reminders of Plaintiff’s**
22 **Impending Execution**

23 69. Mr. Towery explained that throughout the thirty-five days of Death Watch, the
24 condemned prisoner is subjected to ongoing reminders of his impending execution,
25 including by filling out forms determining the disposition of his body after death and
26 allowing him to select his preferred method of execution, and by designating “[i]tems to
27 be destroyed if executed.” *See Towery, Death Watch Diary* at 10, 14. In Mr. Towery’s

28 ⁴ A “dry cell” refers to a cell that is not equipped with sources of water, including a sink and toilet.

1 case, while waiting for his delayed personal items to be provided to him, he recounted
 2 “I’m beholden to the same man who is taking part in my murder and who is greatly
 3 responsible for how miserable my surroundings are right now.” *Id.* at 14.

4 70. Constant reminders of impending death are psychologically torturous.

5 **vi. Death Watch Inflicts Extreme Physical and Psychological Pain Upon**
 6 **Plaintiff Over a Prolonged Period Prior to Execution**

7 71. Solitary confinement is “the degree to which [prisoners] are deprived of normal,
 8 direct, meaningful social contact and denied access to positive environmental stipulation
 9 and activity.” Craig Haney, *The Science of Solitary: Expanding the Harmfulness*
 10 *Narrative*, 115 Nw. U. L. Rev. 211, 212 n.1 (2020).

11 72. Department Order 710’s Death Watch protocol subjects Plaintiff to thirty-five days
 12 of solitary confinement while he awaits his death.

13 73. Social science research on the psychological and physiological effects of solitary
 14 confinement demonstrates that it can create “gastro-intestinal and genito-urinary
 15 problems, diaphoresis [clinical excessive sweating], insomnia, deterioration of eyesight,
 16 lethargy, weakness, profound fatigue, feeling cold, heart palpitations, migraine headaches,
 17 back and other joint pains, poor appetite, weight loss, diarrhea, tremulousness, [and]
 18 aggravation of pre-existing medical problems.” *Prisons and Health*, World Health
 19 Organization Regional Office for Europe, 28 (2014)
 20 https://intranet.euro.who.int/__data/assets/pdf_file/0005/249188/Prisons-and-Health.pdf.

21 74. Psychologically, isolation can “range from acute to chronic” and include: anxiety
 22 (“ranging from feelings of tension to full-blown panic attacks”); “fear of impending
 23 death,” depression, including “hopelessness” and “emotional flatness/blunting,”
 24 “cognitive disturbances” such as “confused thought processes, disorientation,”
 25 “perceptual distortions, ranging from hypersensitivity to hallucinations,” such as
 26 “distortions in time and space,” “depersonalization, detachment from reality,”
 27 “hallucinations affecting all five senses,” “paranoia and psychosis, ranging from
 28 obsessional thoughts to full-blown psychosis,” including “psychotic episodes or states:

1 psychotic depression, schizophrenia,” and self-harm and suicide. *Id.*

2 75. Individuals like Plaintiff with underlying mental health conditions are at an
3 increased risk of suffering severe psychological and physiological harm from the
4 conditions mandated by Department Order 710’s Death Watch Protocol, including its
5 isolation requirements. (*See* Ex.15 at 13); *see also* American Civil Liberties Union, *Caged*
6 *In: Solitary Confinement’s Devastating Harm on Prisoners With Physical Disabilities*, 7
7 (2017)
8 [https://www.aclu.org/sites/default/files/field_document/010916-aclu-](https://www.aclu.org/sites/default/files/field_document/010916-aclu-solitarydisabilityreport-single.pdf)
9 [solitarydisabilityreport-single.pdf](https://www.aclu.org/sites/default/files/field_document/010916-aclu-solitarydisabilityreport-single.pdf) (hereinafter cited as “*Caged In*”).

10 76. The physiological and psychological pain that Plaintiff will continue to suffer while
11 on Death Watch is supported by neurobiological research. Naomi I. Eisenberger &
12 Matthew D. Lieberman, *Why Rejection Hurts: A Common Neural Alarm System for*
13 *Physical and Social Pain*, Vol. 8 No. 7 Trends in Cognitive Sci. 294, 298 (2004). Research
14 suggests that “social and physical pain may rely on overlapping neural processes.” *Id.*
15 Additionally, “solitary confinement [produces] physiological changes in the brain, harm
16 that is therefore physical, potentially observable, and causes mental pain. Jules Lobel &
17 Huda Akil, *Law & Neuroscience: The Case of Solitary Confinement*, Vol. 147(4)
18 Daedalus, the J. of the Am. Acad. of Arts & Sci. 61, 68 (2018). Further, “studies strongly
19 suggest that solitary confinement can fundamentally alter the structure of the human brain
20 in profound and permanent ways.” Brief of Medical and Other Scientific and Health-
21 Related Professionals as *Amici Curiae* in Support of Respondents and Affirmance at 24,
22 *Ziglar v. Abbasi*, 137 S.Ct. 1843 (2017) (Nos. 15-1358, 15-1359, 15-1363), 2016 WL
23 7450491, at *24.

24 77. Because of its deleterious impacts, experts have noted that solitary confinement is
25 frequently used as a form of torture. Stuart Grassian, *Psychiatric Effects of Solitary*
26 *Confinement*, Vol. 22 Wash. U. J. L. & Pol’y 325, 373 (2006).

27 78. By confining Plaintiff pursuant to Department Order 710’s Death Watch protocol,
28 Defendants are deliberately subjecting Plaintiff to extreme psychological and

1 physiological pain and suffering.

2 **vii. Plaintiff's Legal Blindness Exacerbates the Physical and Psychological**
 3 **Pain that Death Watch Inflicts Over a Prolonged Period Prior to His**
 4 **Execution**

5 79. Although all people experiencing solitary confinement are subjected to decreased
 6 meaningful and positive contact with others, limited stimuli inside a small cell, and
 7 unpredictable loud noises, these sensory extremes are exacerbated for blind individuals.
 8 *Caged In* at 4. “[Blind and/or deaf] prisoners often experience a heightened form of
 9 sensory deprivation while trapped in the mind-numbing emptiness of solitary
 10 confinement. Not only are these prisoners locked in their cells for most or all of the day,
 11 they are also frequently denied access to in-cell constructive or recreational activities, such
 12 as reading, writing, or watching television, which can be used to help stimulate the mind
 while in isolation.” *Id.* at 5.

13 80. For blind prisoners like Plaintiff, “the disorienting and jarring sounds [in solitary
 14 confinement—ranging from prisoners shouting, to industrial fans, to the loud banging
 15 sounds that cell doors make when opening or closing—are constant. Such exposure can
 16 result in auditory overload, clogging their only means for obtaining information from their
 17 surroundings with senseless cacophony.” *Id.* at 35.

18 81. By confining Plaintiff pursuant to Department Order 710’s Death Watch protocol
 19 despite their awareness of Plaintiff’s visual disability, Defendants are deliberately
 20 subjecting Plaintiff to unpredictable stimuli that is physiologically and psychologically
 21 harmful.

22 **C. Plaintiff is Being Force to Endure Death Watch Without the Assistance of a**
 23 **Blind Aide**

24 82. Mr. Dixon has been assigned a blind aide since 2017 as part of the ADA
 25 accommodations provided to him by ADCRR. Only with the assistance of his blind aide
 26 has Mr. Dixon been able to engage in certain activities of daily living and activities
 27 essential to his legal case. His blind aide helps him navigate his surroundings by escorting
 28 him to and from appointments and visitation; complete prison-related forms and other

1 paperwork, including HNRs; reading and transcribing correspondence, including letters,
 2 emails, pro per pleadings, and legal mail; and providing Mr. Dixon with information about
 3 his surroundings. Without his blind aide, Mr. Dixon is severely limited in his ability to
 4 complete activities of daily living, including reading, writing, orienting himself to his
 5 surroundings, and corresponding with others including members of his legal team.

6 83. ADCRR provided this modification to Mr. Dixon for five years and assured Mr.
 7 Dixon it would do so if and when he was moved to Death Watch. Despite the fact that
 8 ADCRR acknowledged that Mr. Dixon would be entitled to a blind aide while on Death
 9 Watch, and despite giving assurances that one would be provided, it moved him anyway,
 10 but has refused to provide access to a blind aide.

11 **D. Plaintiff Faces a Substantial Risk of Serious Harm on Death Watch**

12 84. The psychological and physiological harm resulting from Death Watch's solitary
 13 confinement requirement is not a risk of harm that society chooses to tolerate. *See*
 14 *Americans on Proposals to Reform Solitary Confinement*, School of Pub. Pol'y, U. of
 15 Maryland (June 2021) [https://publicconsultation.org/wp-](https://publicconsultation.org/wp-content/uploads/2021/07/SolitaryReport2021.pdf)
 16 [content/uploads/2021/07/SolitaryReport2021.pdf](https://publicconsultation.org/wp-content/uploads/2021/07/SolitaryReport2021.pdf) (opinion poll finding that 86% of those
 17 polled favored "reforms in current Congressional legislation that would greatly restrict the
 18 use of solitary confinement [for prisoners generally], including 84% of Republicans and
 19 90% of Democrats[>").

20 85. The harms inherent in Department Order 710's Death Watch protocol are
 21 substantial and serious for all death-sentenced prisoners, but especially so for blind
 22 prisoners like Plaintiff who face an increased risk of psychological and physiological
 23 suffering. *See Caged In* at 5.

24 86. Department Order 710's Death Watch protocol subjects Plaintiff to persistent
 25 reminders of his impending execution, simultaneous sensory deprivation and sensory
 26 overload (including the fear of unpredictable and unfamiliar noises and voices), the
 27 physical danger of navigating unfamiliar surroundings as a blind man, continuous
 28 observation by those he cannot see, and he faces an increased risk of paranoia, psychosis,

1 self-harm, and suicidality.

2 87. Department Order 710's Death Watch protocol forces Plaintiff to contemplate his
3 execution constantly without reprieve. In his grievance to ADCRR, Plaintiff put
4 Defendants on notice that he will spend "35 days and nights under severe spartan and
5 aggravated conditions of confinement that I will be subject to under D.O. 710 constitutes
6 cruel and unusual punishment and violates my state and federal rights." (Ex. 17.)
7 Completing the necessary execution paperwork, daily health checks, and detention in
8 unfamiliar surroundings are markers by which Plaintiff is forced to continuously
9 contemplate his impending death.

10 88. Department Order 710's Death Watch protocol provides Plaintiff with limited ways
11 of distracting himself from rumination about his execution. This persistent, forced
12 contemplation of certain impending death is torturous.

13 89. As someone who is legally blind, Plaintiff will be subjected to the disorienting and
14 jarring sounds and unfamiliar voices that are a result of the death-watch setting. Such
15 exposure may result in auditory overload, thus interfering with one of Plaintiff's primary
16 means for obtaining information from his surroundings.

17 90. Department Order 710's Death Watch protocol subjects Plaintiff to the heightened
18 danger that he will injure himself in unfamiliar surroundings as a result of his visual
19 impairment, including by tripping or falling.

20 91. By subjecting Plaintiff to continuous observation, Department Order 710's Death
21 Watch protocol exacerbates Plaintiff's paranoia and schizophrenic symptoms. The
22 compounding effects of knowing he is being continuously observed and filmed, being
23 unable to see the corrections officers who are watching him, and being subjected to
24 unpredictable routines, unfamiliar noises, and a distorted sense of time is analogous to
25 "hooding" torture used to deprive prisoners of war of visual environmental cues.

26 92. By subjecting Plaintiff to continuous observation, including when using the toilet,
27 Department Order 710's Death Watch protocol places Plaintiff at heightened risk of
28 suffering from humiliating and painful gastro-intestinal discomfort.

1 93. By subjecting Plaintiff, who suffers from paranoid schizophrenia, to Department
2 Order 710's Death Watch protocol, Defendants have placed Plaintiff at substantial risk of
3 serious psychiatric harm by exacerbating his underlying mental illness.

4 94. Department Order 710's Death Watch protocol subjects Plaintiff to a substantial
5 risk of serious physiological and psychological harm that is inconsistent with evolving
6 standards of decency.

7 95. Defendants are aware of the substantial risk of harm that Plaintiff is experiencing
8 and will continue to experience on Death Watch because they are aware of his legal
9 blindness, mental illness, and need for an ADA-mandated blind aide accommodation.
10 Moreover, Plaintiff and his counsel made Defendants aware of the substantial risk of harm
11 that Plaintiff will suffer if moved to Death Watch prior to the warrant for Plaintiff's
12 execution issuing.

13 96. Defendants are aware of the physiological harms to prisoners confined on Death
14 Watch pursuant to Department Order 710 as evidenced by the protocol's daily weigh-ins
15 and prison policy of providing medication to alleviate physiological distress to those on
16 Death Watch.

17 97. Department Order 710's Death Watch protocol is not narrowly tailored to further
18 a legitimate State interest.

19 98. Detaining Plaintiff on Death Watch pursuant to Department Order 710 is not
20 necessary; nor is it narrowly tailored to prevent a risk of self-harm. Indeed, confining
21 Plaintiff on Death Watch pursuant to Department Order 710 *increases* the risk of self-
22 harm as a result of the physical and psychological suffering it inflicts.

23 99. Defendants have refused to provide Plaintiff with reasonable abatement of the
24 substantial risk of serious harm that he faces on Death Watch by permitting him to remain
25 in his cell on Central Unit with regular access to his blind aide, Brad Nelson, until a
26 reasonable period prior to his scheduled execution.

27 100. Defendants have not reasonably abated the risk of serious harm to Plaintiff on
28 Death Watch by merely providing him with auxiliary aids. Death Watch still subjects

1 Plaintiff to conditions that create a substantial risk of physical and psychological harm
 2 resulting from isolation, intermittent noise, unfamiliar surroundings, unfamiliar
 3 individuals constantly coming in and out of the area surrounding his cell, constant
 4 surveillance, and the inability to know who is watching him.

5 **Causes of Action**

6 **First Cause of Action**

7 **(42 U.S.C. § 1983; Eighth Amendment; isolation of individuals with severe**
 8 **mental illness; isolation of individuals with physical disabilities)**

9 101. Plaintiff incorporates and realleges each of the allegations contained in paragraphs
 10 1 through 100 of this Complaint as though fully set forth herein.

11 42 U.S.C. § 1983 provides:

12 Every person who, under color of any statute, ordinance, regulation,
 13 custom, or usage, of any State or Territory or the District of Columbia,
 14 subjects, or causes to be subjected, any citizen of the United States or
 15 other person within the jurisdiction thereof to the deprivation of any
 rights, privileges, or immunities secured by the Constitution and laws,
 shall be liable to the party injured in an action at law, suit in equity, or
 other proper proceeding for redress[.]

16 102. The Eighth Amendment to the United States Constitution prohibits the federal
 17 government from inflicting “cruel and unusual punishments.” The Eighth Amendment is
 18 applicable to the states, including Arizona, by the due process clause of the Fourteenth
 19 Amendment to the United States Constitution.

20 103. Defendants, their agents, officials, employees, and others acting in concert with
 21 them under color of law, by and pursuant to ADCRR’s policy, custom, and practice of
 22 subjecting prisoners under a sentence of death to Department Order 710’s Death Watch
 23 protocol, are in violation of the Eighth Amendment to the United States Constitution’s
 24 prohibition on cruel and unusual punishment.

25 104. Defendants, their agents, officials, employees, and others acting in concert with
 26 them under color of law, by and pursuant to ADCRR’s policy, custom, and practice of
 27 isolating Plaintiff—who is visually disabled and severely mentally ill—pursuant to
 28 Department Order 710’s Death Watch protocol, are in violation of Plaintiff’s rights under

1 the Eighth Amendment to the United States Constitution to be free from cruel and unusual
2 punishment.

3 105. Defendants, their agents, officials, employees, and others acting in concert with
4 them under color of law, by and pursuant to ADCRR's policy, custom, and practice of
5 isolating and continuously observing prisoners pursuant to Department Order 710's Death
6 Watch protocol violates the Eighth Amendment to the United States Constitution's
7 prohibition against cruel and unusual punishment.

8 106. Defendants, their agents, officials, employees, and others acting in concert with
9 them under color of law, by and pursuant to ADCRR's policy, custom, and practice of
10 isolating and continuously observing Plaintiff—who is visually disabled and severely
11 mentally ill—pursuant to Department Order 710's Death Watch protocol, are in violation
12 of Plaintiff's rights under the Eighth Amendment to the United States Constitution to be
13 free from cruel and unusual punishment.

14 107. Department Order 710's Death Watch protocol is facially unconstitutional under
15 the Eighth and Fourteenth Amendments to the United States Constitution.

16 108. Department Order 710's Death Watch protocol is unconstitutional as applied to
17 Plaintiff—who is legally blind and suffers from paranoid schizophrenia.

18 **Second Cause of Action**

19 **(Deliberate Indifference; Eighth Amendment)**

20 109. Plaintiff incorporates and realleges each of the allegations contained in paragraphs
21 1 through 108 of this Complaint as though fully set forth herein. *See Helling v. McKinney*,
22 509 U.S. 25, 33–35 (1993).

23 110. “Deliberate indifference” exists where the ADCRR “knows of and disregards an
24 excessive risk to inmate health or safety.” *Farmer*, 511 U.S. at 837. To meet this prong,
25 Plaintiff need not show that ADCRR acted with “the very purpose of causing harm or with
26 knowledge that harm [would] result.” *Id.* at 835. “Whether a prison official had the
27 requisite knowledge of a substantial risk is a question of fact subject to demonstration in
28 the usual ways, including inference from circumstantial evidence,” *Id.* at 842, and a

1 plaintiff may establish deliberate indifference by showing that the identified risk was
 2 “longstanding, pervasive, well-documented, or expressly noted by prison officials in the
 3 past.” *Id.* at 842–43 (internal quotation marks omitted). Knowledge can be demonstrated
 4 by circumstantial evidence, and “a factfinder may conclude that a prison official knew of
 5 a substantial risk from the very fact that the risk was obvious.” *Id.* at 842. The Eighth
 6 Amendment also prohibits deliberate indifference to conditions of confinement that are
 7 very likely to cause future serious illness and needless suffering. *Helling*, 509 U.S. at 33.
 8 111. ADCRR is aware of Plaintiff’s legal blindness, mental illness, and need for an
 9 ADA-mandated blind aide modification; it has provided that modifications for 5 years and
 10 promised it would do so if and when Plaintiff was moved to Death Watch. Moreover,
 11 Plaintiff and his counsel made ADCRR aware of the substantial risk of harm that Plaintiff
 12 will suffer if moved to Death Watch prior to the warrant for Plaintiff’s execution issuing.
 13 Yet, ADCRR moved him anyway, in conscious disregard of legal duties it had long
 14 embraced. For Plaintiff, due to his mental illness and visual disability, the conditions of
 15 Death Watch place him at increased risk of psychological and physical suffering compared
 16 to prisoners without such disabilities. Detaining Plaintiff on Death Watch is not necessary
 17 to carry out his execution. ADCRR’s choice to do so, and its failure to accommodate his
 18 disability-related needs, despite the knowledge that Death Watch increases the risk of
 19 psychological suffering and mental deterioration, is the definition of deliberate
 20 indifference.

21 **Third Cause of Action**

22 **(Violation of Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131,
 23 et seq.)**

24 112. Plaintiff incorporates and realleges each of the allegations contained in paragraphs
 25 1 through 111 of this Complaint as though fully set forth herein. The ADA provides, in
 26 relevant part, that “no qualified individual with a disability shall, by reason of such
 27 disability, be excluded from participation in or be denied the benefits of the services,
 28 programs, or activities of a public entity, or be subjected to discrimination by any such
 entity.” 42 U.S.C. § 12132, et seq.

1 113. Public entities may not “[d]eny a qualified individual with a disability the
 2 opportunity to participate in or benefit from [an] aid, benefit, or service” they provide, nor
 3 may they afford such individuals “an opportunity to participate in or benefit from the aid,
 4 benefit, or service that is not equal to that afforded others.” 28 C.F.R. § 35.130(b)(1)(i)–
 5 (ii). ADA regulations prohibit public entities from providing a qualified individual with a
 6 disability “an aid, benefit, or service that is not as effective in affording equal opportunity”
 7 to gain a result or benefit and from “limit[ing] a qualified individual with a disability in
 8 the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others
 9 receiving the aid, benefit, or service.” *Id.* § 35.130(b)(1)(iii), (vii).

10 114. Public entities must “ensure that communications with . . . participants . . . with
 11 disabilities are as effective as communications with others.” *Id.* § 35.160(a)(1).

12 115. Public entities are required to “make reasonable modifications in policies,
 13 practices, or procedures . . . to avoid discrimination on the basis of disability,” unless such
 14 modifications “would fundamentally alter the nature of the service, program, or activity.”
 15 *Id.* § 35.130(b)(7). They must also “furnish appropriate auxiliary aids and services where
 16 necessary to afford individuals with disabilities . . . an equal opportunity to participate in,
 17 and enjoy the benefits of, a service, program, or activity[.]” *Id.* § 35.160(b)(1); *see also*
 18 42 U.S.C. §§ 12102(4)(E)(i)(III), 12103(1), 12131(2). “[A]uxiliary aids and services must
 19 be provided in accessible formats, in a timely manner, and in such a way as to protect the
 20 privacy and independence of the individual with a disability.” 28 C.F.R. § 35.160(b)(2).
 21 Auxiliary aids and services include “qualified readers, taped texts, or other effective
 22 methods of making visually delivered materials available to individuals with visual
 23 impairments” and the “acquisition or modification of equipment or devices.” 42 U.S.C. §
 24 12103(1).

25 116. Title IV of the ADA prohibits discrimination against individuals for “oppos[ing]
 26 any act or practice made unlawful” by the ADA or for participating in any way in an
 27 investigation proceeding under the ADA. 42 U.S.C. § 12203(a). It also makes it “unlawful
 28 to coerce, intimidate, threaten, or interfere with any individual in the exercise or

1 enjoyment of, or on account of his or her having exercised or enjoyed, or on account of
2 his or her having aided or encouraged any other individual in the exercise or enjoyment
3 of, any right granted or protected by” the ADA. *Id.* § 12203(b).

4 117. Plaintiff is a qualified individual with disabilities within the meaning of the ADA,
5 42 U.S.C. §§ 12102, 12131, and 28 C.F.R. § 35.104. Plaintiff has physical impairments
6 in that he is legally blind. Plaintiff also suffers from brain abnormalities and serious mental
7 illnesses, including several diagnoses of paranoid schizophrenia, psychotic disorder, and
8 prior findings of legal insanity.

9 118. ADCRR services, programs, and activities are covered by the ADA. The services,
10 programs, and activities that ADCRR provides to individuals on Death Watch include, but
11 are not limited to, sleeping; eating; showering; toileting; access to legal and religious
12 materials, a pencil and paper, and a book or periodical; communicating with those outside
13 the prison via telephone and non-contact visits; outdoor exercise; television entertainment;
14 safety and security; and medical and mental health services. *See* DO 710 §§ 7.2.4–7.2.10.

15 119. Defendants are, and at all times relevant hereto were, aware of Plaintiff’s blindness
16 and mental illness and have failed to make a reasonable modification to their policies,
17 procedures, and/or practices so as to permit Plaintiff access to his blind aide while on Death
18 Watch for thirty-five days prior to his execution pursuant to Department Order 710.
19 Retaliation by Defendants’ employees against prisoners who have historically assisted
20 Plaintiff with ensuring that he is not deprived of his ADA-mandated auxiliary aids
21 constitutes discrimination against Plaintiff because of his blindness.

22 120. Despite Defendants’ knowledge of Plaintiff’s visual disability and their prior
23 recognition that he is legally entitled to the use of an ADA-mandated blind aide to
24 facilitate his daily existence, Defendants have failed to provide Plaintiff with that
25 accommodation during the period of time he is on Death Watch.

26 121. Defendants have failed to meet their affirmative obligations to avoid disability
27 discrimination as a result of their decision to transfer Plaintiff to Death Watch where he
28 does not have access to a blind aide. Defendants have not implemented reasonable

1 modifications or changes to Department Order 710's Death Watch protocol that would
2 mitigate the harm to Plaintiff in the absence of this accommodation. Defendants' failure
3 to do so constitutes discrimination on the basis of Plaintiff's known physical disability
4 and subjects him to physical and psychological harm. Defendants' failure to provide a
5 blind attendant to Plaintiff denies him the benefits of, and discriminates against him with
6 respect to, equal access to, the services, programs, and activities that are accessible to
7 other sighted prisoners on Death Watch.

8 122. Defendants are deliberately depriving Plaintiff of an accommodation to which he
9 is legally entitled, and which permits him to engage in the activities of daily living.
10 Without the use of his blind aide, he is unable to fill out prison-related forms and
11 paperwork—including health needs requests ("HNRs") outside of legal visitation hours,
12 or read written correspondence, organize his paperwork, package and mail
13 correspondence, locate items in his cell, or identify who and what are in his immediate
14 surroundings.

15 123. As a result of Defendants' discriminatory policies and practices, Plaintiff has, and
16 will continue to, suffer physical and psychological pain, severe anxiety, and emotional
17 distress.

18 124. Plaintiff is entitled to reasonable modifications to Department Order 710's Death
19 Watch protocol, the simplest of which is for Defendants to refrain from detaining Plaintiff
20 on Death Watch. Other accommodations include modifications to the Defendants' pre-
21 execution protocols to permit Plaintiff access to a blind aide while on Death Watch.

22 125. By failing to make a reasonable modification to Department Order 710's Death
23 Watch protocol to account for Plaintiff's visual disability, Defendants are in violation of
24 the prohibition against disability-based discrimination under the ADA.

25 **Fourth Cause of Action**

26 **(Violation of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794)**

27 126. Plaintiff incorporates and realleges each of the allegations contained in paragraphs
28 1 through 125 of this Complaint as though fully set forth herein.

1 127. Section 504 of the Rehabilitation Act of 1973 provides, in relevant part, that “[n]o
2 otherwise qualified individual with a disability in the United States . . . shall, solely by
3 reason of her or his disability, be excluded from participation in, be denied benefits of, or
4 be subjected to discrimination under any program or activity receiving Federal financial
5 assistance.” 29 U.S.C. § 794(a).

6 128. Section 504 defines “program or activity,” in pertinent part, as “all of the operations
7 of a department, agency, . . . or other instrumentality of a State . . .; or the entity of such
8 State or local government that distributes such assistance and each such department or
9 agency (and each other State or local government entity) to which the assistance is
10 extended.” *Id.* § 794(b)(1). The requirements of Section 504 apply “to each recipient of
11 Federal financial assistance from the Department of Justice[.]” 28 C.F.R. § 42.502.

12 129. Federally funded programs and activities may not “[d]eny a qualified handicapped
13 person the opportunity accorded to others to participate” or “achieve the same benefits
14 that others achieve” from the program or activity. *Id.* § 42.503(b)(1)(i)–(ii).

15 130. Recipients of federal funds are required to “insure that communications with their
16 . . . beneficiaries are effectively conveyed to those having impaired vision[.]” *Id.* §
17 42.503(e).

18 131. The “criteria or methods of administration” of a recipient of federal funds may not
19 “purposefully or in effect discriminate on the basis of handicap” or “defeat or substantially
20 impair accomplishment of the objectives of the recipient’s program or activity with
21 respect to handicapped persons.” *Id.* § 42.503(b)(3).

22 132. Additionally, “[a] recipient that employs fifteen or more persons shall provide
23 appropriate auxiliary aids to qualified handicapped persons with impaired sensory . . .
24 skills where a refusal to make such provision would discriminatorily impair or exclude
25 the . . . persons in a program or activity receiving Federal financial assistance.” *Id.* §
26 42.503(f). Appropriate auxiliary aids include, but are not limited to, “brailled and taped
27 materials, . . . readers, . . . [a]ttendants, individually prescribed devices, readers for
28 personal use or study, or other devices or services of a personal nature[.]” *Id.* § 42.503(f).

1 133. A recipient may not “[i]ntimidate or retaliate against any individual, whether
2 handicapped or not, for the purpose of interfering with any right secured by section 504[.]”
3 *Id.* § 42.503(b)(1)(vii).

4 134. Plaintiff, who is blind and severely mentally ill, is a qualified individual with a
5 disability within the meaning of Section 504, 29 U.S.C. § 705(20), 42 U.S.C. § 12102.

6 135. Defendant ADCRR receives federal financial assistance thereby subjecting itself
7 to the requirements of Section 504. 29 U.S.C. § 794(a). ADCRR employs more than
8 fifteen people. It is legally responsible for Section 504 violations committed by ADCRR
9 staff and contractors who provide programs or activities, including but not limited to
10 transferring prisoners to Death Watch and overseeing and operating Death Watch.

11 136. ADCRR’s programs and activities are covered by Section 504, 29 U.S.C. §
12 794(b)(1). The programs and activities that ADCRR provides to prisoners on Death Watch
13 include, but are not limited to, sleeping; eating; showering; toileting; access to legal and
14 religious materials, a pencil and paper, and a book or periodical; communicating with
15 those outside the prison via telephone and non-contact visits; outdoor exercise; television
16 entertainment; safety and security; and medical and mental health services. *See* DO 710
17 §§ 7.2.4–7.2.10.

18 137. Defendants are, and at all times relevant hereto were, aware of Plaintiff’s blindness
19 and mental illness and have failed to make a reasonable modification to their policies,
20 procedures, and/or practices so as to permit Plaintiff access to his blind aide while on Death
21 Watch for thirty-five days prior to his execution pursuant to Department Order 710.
22 Retaliation by Defendants’ employees against prisoners who have historically assisted
23 Plaintiff with ensuring that he is not deprived of appropriate auxiliary aids also constitutes
24 discrimination against Plaintiff because of his blindness.

25 138. Defendants have failed to meet their affirmative obligations to avoid disability
26 discrimination as a result of their decision to transfer Plaintiff to Death Watch where he
27 does not have access to a blind aide. Defendants have not implemented reasonable
28 modifications or changes to Department Order 710’s Death Watch protocol that would

1 mitigate the harm to Plaintiff. Defendants' failure to do so constitutes discrimination on
 2 the basis of Plaintiff's known physical disability and subjects him to physical and
 3 psychological harm. Defendants' failure to provide a blind attendant to Plaintiff denies
 4 him the benefits of, and discriminates against him with respect to equal access to, the
 5 programs and activities that are accessible to other sighted prisoners on Death Watch.

6 139. As a result of Defendants' discriminatory policies and practices, Plaintiff has, and
 7 will continue to, suffer physical and psychological pain and suffering, severe anxiety, and
 8 emotional distress.

9 140. Plaintiff is entitled to reasonable modifications to Department Order 710's Death
 10 Watch protocol, the simplest of which is for Defendants to refrain from detaining Plaintiff
 11 on Death Watch. Other accommodations include modifications to the Defendants' pre-
 12 execution protocols to permit Plaintiff access to a blind aide while on Death Watch.

13 141. By failing to make reasonable modifications to Department Order 710's Death
 14 Watch protocol to account for Plaintiff's visual disability, Defendants are in violation of
 15 the prohibition against disability-based discrimination under Section 504 and its
 16 supporting regulations.

17 **Fifth Cause of Action**
 18 **(Declaratory and Injunctive Relief)**

19 142. Plaintiff incorporates and realleges each of the allegations contained in paragraphs
 20 1 through 141 of this Complaint as though fully set forth herein.

21 143. By detaining Plaintiff on Death Watch for thirty-five days prior to his scheduled
 22 execution, Defendants have subjected Plaintiff to psychological and physiological pain
 23 and suffering.

24 144. By detaining Plaintiff on Death Watch for thirty-five days prior to his scheduled
 25 execution without the necessary ADA-mandated blind aide accommodation to which
 26 Plaintiff is entitled due to his visual disability, Defendants have discriminated against
 27 Plaintiff on account of his disability.
 28

1 145. Unless and until enjoined from confining Plaintiff to Death Watch, Defendants will
 2 continue to subject Plaintiff to cruel and unusual punishment, and to disability-based
 3 discrimination.

4 146. Through their past and prospective conduct, Defendants have deprived and will
 5 deprive Plaintiff of his Eighth and Fourteenth Amendment rights to freedom from cruel
 6 and unusual punishment, and his rights to freedom from disability-based discrimination
 7 as guaranteed under the ADA and Section 504.

8 147. Both the ADA and Section 504 authorize injunctive relief as appropriate to remedy
 9 acts of discrimination against persons with disabilities. 42 U.S.C. § 12188(a)(1)-(a)(2); 29
 10 U.S.C. § 794a(a)(2).

11 148. Unless and until enjoined from subjecting Plaintiff to Department Order 710's
 12 Death Watch protocol, Defendants will continue to violate Plaintiff's Eighth and
 13 Fourteenth Amendment rights, as well as his rights under the ADA and Section 504.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, having set forth his claims against Defendants, Plaintiff respectfully
 16 requests judgment as follows:

- 17 1. For a judicial declaration that Department Order 710's Death Watch protocol
 18 constitutes cruel and unusual punishment under the Eighth and Fourteenth
 19 Amendments to the United States Constitution.
- 20 2. For a judicial declaration that Plaintiff will be subjected to cruel and unusual
 21 punishment unless and until Defendants are enjoined from confining him pursuant
 22 to Department Order 710's Death Watch protocol.
- 23 3. For a judicial declaration that Defendants will violate Plaintiff's rights under the
 24 ADA and Section 504 of the Rehabilitation Act of 1973 unless and until Defendants
 25 are enjoined from confining him pursuant to Department Order 710's Death Watch
 26 protocol.
- 27 4. For a preliminary and permanent injunction prohibiting Defendants from
 28 subjecting Plaintiff to Department Order 710's Death Watch protocol.

- 1 5. For the grant of final judgment in Plaintiff's favor on all claims set forth herein.
- 2 6. For the grant of such further relief as the Court deems just and proper.

3 Respectfully submitted this 13th day of April, 2022.

4
5 Jon M. Sands
6 Federal Public Defender
7 District of Arizona

8 Alison Y. Rose
9 Amanda C. Bass
10 Eric Zuckerman
11 Jennifer M. Moreno
12 Assistant Federal Public Defenders

13 s/ Alison Y. Rose
14 Counsel for Petitioner
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